



uniongas

A Spectra Energy Company

October 11, 2007

Ms. Kirsten Walli
Board Secretary
Ontario Energy Board
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: The Corporation of the Municipality of Central Elgin
- Franchise Agreement and Certificate of Public Convenience and Necessity**

Enclosed are three (3) copies of an Application by Union Gas Limited for Orders of the Board with respect to a Franchise Agreement and Certificate of Public Convenience and Necessity with the Corporation of the Municipality of Central Elgin. An agreement has been reached between Union and the Municipality of Central Elgin with regards to associated terms and conditions.

Should you have any questions, please do not hesitate to contact me or Lynda Anderson ((519) 436-4600 ext. 2161 or landerson@uniongas.com). We look forward to receipt of your instructions.

Yours truly,

[Original signed by]

Pat McMahon
Manager, Regulatory Research and Records

PM/la

Encl.

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Municipal Franchises Act*, R.S.O. 1990, c.M.55, s.9;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order approving the terms and conditions upon which the Corporation of the Municipality of Central Elgin is, by by-law, to grant to Union Gas Limited the right to construct or operate works for the distribution, transmission and storage of natural gas and the right to extend or add to the works;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order declaring and directing that the assent of the electors is not necessary;

AND IN THE MATTER OF an Application by Union Gas Limited for an Order cancelling and superseding the existing Certificates of Public Convenience and Necessity held by Union Gas Limited for the former municipalities within the Municipality of Central Elgin and replacing them with a single Certificate of Public Convenience and Necessity for those areas of the amalgamated Corporation of the Municipality of Central Elgin not covered by any Certificate of Public Convenience and Necessity held by Natural Resource Gas Limited.

-: UNION GAS LIMITED :-

1. Union Gas Limited ("Union"), a regulated public utility, is a corporation incorporated under the laws of the Province of Ontario, with its head office at the Municipality of Chatham-Kent, in the Province of Ontario.
2. The Corporation of the Municipality of Central Elgin (the "Municipality") is a municipal corporation incorporated under the laws of the Province of Ontario. Attached hereto and marked as Schedule "A" is a map showing the location of the Municipality.
3. Union applied to the Council of the Municipality for a franchise permitting Union to construct or operate works for the distribution, transmission and storage of natural gas and the right to extend or add to the works in those areas of the Municipality not serviced by Natural Resource Gas Limited.
4. On August 23, 2007, the Council of the Municipality gave approval to the form of a Franchise Agreement in favour of Union to apply to the Ontario Energy Board for approval of the terms and conditions upon which and the period for which the Franchise Agreement is proposed to be granted.

5. Attached hereto as Schedule "B" is a copy of the Resolution of the Council of the Municipality approving the form of the proposed Franchise Agreement and requesting the Ontario Energy Board to direct and declare that the assent of the municipal electors is not necessary.
6. Attached hereto as Schedule "C" is the form of By-law No. 977 granting to Union the franchise and a copy of the proposed Franchise Agreement between Union and the Municipality.
7. On January 31, 1998, the former Township of Yarmouth, the former Village of Port Stanley and the former Village of Belmont were amalgamated to form the Municipality of Central Elgin by Minister's Order.
8. Union has Franchise Agreements and Certificates granting Union the right to construct works to supply natural gas within these former municipalities as follows:

Township of Yarmouth - Union's Franchise Agreement with the former Township of Yarmouth, effective October 7, 1996, expires on October 7, 2011 and includes all the lots outlined in two of the Board's Orders (E.B.A. 753 and E.B.A. 691), attached hereto as Schedule "D". Natural Resource Gas Limited services all of the remainder of the former Township of Yarmouth. Please see the map attached hereto as Schedule "E". Union's Certificate of Public Convenience and Necessity for the former Township of Yarmouth is F.B.C. 252.

Village of Port Stanley - Union's Franchise Agreement with the former Village of Port Stanley (E.B.A. 224), effective July 18, 1977, expired on July 18, 2007. Union's Certificate of Public Convenience and Necessity for the former Village of Port Stanley is F.B.C. 259.

9. Village of Belmont - Union does not have a Franchise Agreement or Certificate of Public Convenience and Necessity for the former Village of Belmont, which now forms part of the Municipality of Central Elgin. It is Union's understanding that E.B.A. 358 dated May 5, 1982 provides Natural Resource Gas Limited with the franchise and E.B.C. 111 and E.B.C. 119 dated May 5, 1982 provide Natural Resource Gas Limited with the Certificates of Public Convenience and Necessity for the former Village of Belmont.
10. Union has Certificates and Franchise Agreements for the City of St. Thomas, the Township of Southwold, Elgin County, the City of London, and the former Township of North Dorchester (now the Municipality of Thames Centre) which are immediately adjacent to the Municipality. The nearest natural gas utility other than Union is Natural Resource Gas Limited.
11. The proposed Franchise Agreement for the amalgamated Municipality of Central Elgin covers the same territory as that covered by the existing Franchise Agreements, plus parts of the former Township of Yarmouth and the former Village of Belmont serviced by Natural Resource Gas Limited. Union does not intend to construct or operate works in the areas of the Municipality that are not covered by any Certificate of Public Convenience and Necessity held by Natural Resource Gas Limited.

12. The proposed Franchise Agreement is in the form of the 2000 Model Franchise Agreement with no amendments and is for a term of twenty (20) years.
13. Union currently holds two Certificates of Public Convenience and Necessity which are applicable in whole or in part to the former municipalities that were amalgamated into the Municipality of Central Elgin.

F.B.C. 259 (dated March 17, 1959) applies to 81 current and former municipalities including the former Township of Yarmouth and the former Village of Port Stanley.

F.B.C. 252 (dated May 7, 1997) applies to the former Township of Yarmouth and replaced that section of Union's existing Certificate of Public Convenience and Necessity (F.B.C. 259) which relates to the former Township of Yarmouth.

Union is requesting the cancellation of F.B.C. 252. Given the number of municipalities to which F.B.C. 259 applies, Union is requesting that only the part of F.B.C. 259 related to the former Village of Port Stanley be superseded by the requested single Certificate of Public Convenience and Necessity for the amalgamated Municipality of Central Elgin.

14. The address of the Municipality is as follows:

The Corporation of the Municipality of Central Elgin
450 Sunset Drive
St. Thomas, ON N5R 5V1
Attention: Mr. Donald N. Leitch, Chief Administrative Officer/Clerk
Telephone: (519) 631-4860 Fax: (519) 631-4036

The address for Union's district office is:

Union Gas Limited
109 Commissioners Road
London, Ontario N6A 4P1
Attention: Wes Armstrong, Operations Manager, London/Sarnia
Telephone: (519) 667-4109 Fax: (519) 667-4299

15. Union now applies to the Ontario Energy Board for:
 - (a) an Order under s.9(3) approving the terms and conditions upon which and the period for which the Municipality is, by by-law, to grant Union Gas the right to construct or operate works for the distribution, transmission and storage of natural gas and the right to extend or add to the works;
 - (b) an Order pursuant to s.9(4) directing and declaring that the assent of the electors of the Municipality is not necessary for the proposed franchise by-law under the circumstances; and

- (c) an Order cancelling and superseding the existing Certificates of Public Convenience and Necessity for the former municipalities within the Municipality of Central Elgin and replacing them with a single Certificate of Public Convenience and Necessity for those areas of the amalgamated Corporation of the Municipality of Central Elgin not covered by any Certificate of Public Convenience and Necessity held by Natural Resource Gas Limited.

DATED at the Municipality of Chatham-Kent, in the Province of Ontario this 11th day of October, 2007.

UNION GAS LIMITED

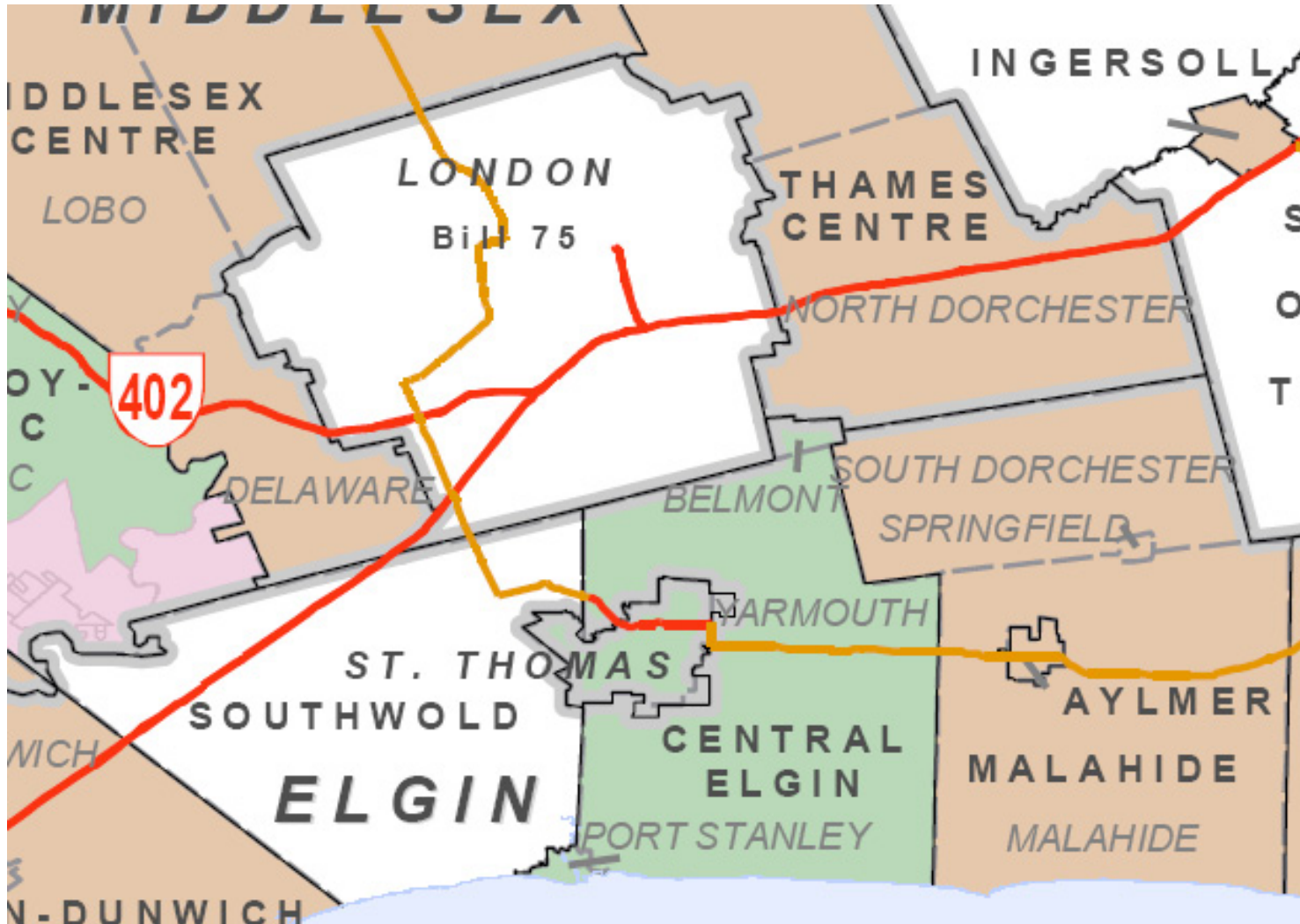
[Original signed by]

Mark Murray
Assistant General Counsel

Comments respecting this Application should be directed to:

Mr. Patrick McMahon
Manager, Regulatory Research and Records
Union Gas Limited
50 Keil Drive North
CHATHAM, ON N7M 5M1
Telephone: (519) 436-5325 Fax: (519) 436-4641

Municipality of Central Elgin



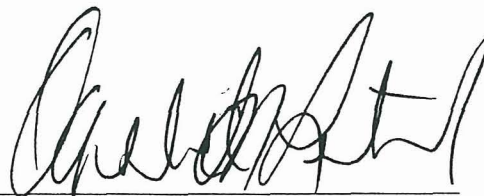
THE CORPORATION OF THE MUNICIPALITY OF CENTRAL ELGIN

RESOLUTION

RESOLVED THAT:

1. This Council approves the form of draft by-law and franchise agreement attached hereto and authorizes the submission thereof to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of The Municipal Franchises Act.
2. This Council requests that the Ontario Energy Board make an Order declaring and directing that the assent of the municipal electors to the attached draft by-law and franchise agreement pertaining to the Corporation of the Municipality of Central Elgin is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.

I HEREBY CERTIFY the foregoing to be a true copy of a Resolution passed by the Council of the Corporation of the Municipality of Central Elgin on the **23rd** day of **August**, 200**7**.



Donald N. Leitch CAO/Clerk

*THE CORPORATION OF THE MUNICIPALITY OF
CENTRAL ELGIN*

BY-LAW 977

**A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT
BETWEEN THE CORPORATION OF THE MUNICIPALITY OF
CENTRAL ELGIN AND UNION GAS LIMITED**

WHEREAS the Council of the Corporation of the Municipality of Central Elgin deems it expedient to enter into the attached franchise agreement (the "Franchise Agreement") with Union Gas Limited;

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the day of , 20 has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary:

NOW THEREFORE the Council of the Corporation of the Municipality of Central Elgin enacts as follows:

1. **THAT** the Franchise Agreement between the Corporation of the Municipality of Central Elgin and Union Gas Limited, attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.
2. **THAT** the Mayor and CAO/Clerk are hereby authorized and instructed on behalf of the Corporation of the Municipality of Central Elgin to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-Law.
3. **THAT** the following by-laws are hereby repealed:

 By-law #1778 for the Corporation of the Municipality of Port Stanley, passed in Council on the 18th day of July, 1977;

 By-law #3474 for the Corporation of the Township of Yarmouth, passed in Council on the 7th day of October, 1996;
4. **THAT** this by-law shall come into force and take effect as of the final passing thereof.

Read a first time this 23rd day of August, 2007.

Read a second time this 23rd day of August, 2007.

Read a third time and finally passed this day of , 2007.

Donald N. Leitch, CAO/Clerk

Sylvia Hofhuis, Mayor

- (b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;
- (c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;
- (e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;
- (f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the *Municipal Franchises Act*. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;
- (g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;
- (h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and
- (i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.

Part II - Rights Granted

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law provided that, if during the 20 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 20 year term.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the *Municipal Franchises Act*.

Part III – Conditions

5. Approval of Construction

- (a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefore has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.
- (b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.
- (c) The Plan filed by the Gas Company shall include geodetic information for a particular location:
 - (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or
 - (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.
- (d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.
- (e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.
- (f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.

- (g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the *Drainage Act*, or such other person designated by the Corporation as responsible for the drain.
- (h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.
- (i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.
- (j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. **As Built Drawings**

The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. **Emergencies**

In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.

8. **Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. **Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. **Insurance**

- (a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.
- (b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.
- (c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.

11. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. Pipeline Relocation

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
- (b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
- (c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
 - (i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
 - (ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
 - (iii) the amount paid by the Gas Company to contractors for work related to the project,

- (iv) the cost to the Gas Company for materials used in connection with the project, and
 - (v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
- (d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

- (a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.
- (b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any

loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. Use of Decommissioned Gas System

- (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:
 - (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and
 - (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.
- (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided
 - (i) the third party has entered into a municipal access agreement with the Corporation; and
 - (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.
- (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. Franchise Handbook

The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.

18. **Other Conditions**

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

19. **Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**THE CORPORATION OF THE
MUNICIPALITY OF CENTRAL ELGIN**

Per:

Sylvia Hofhuis, Mayor

Per:

Donald N. Leitch, CAO/Clerk

UNION GAS LIMITED

Per:

Vice President

Per:

Assistant Secretary



IN THE MATTER OF the Municipal Franchises Act,
R.S.O. 1990, c. M.55:

AND IN THE MATTER OF an Application by Union Gas Limited for an order approving the terms and conditions upon which the Corporation of the Township of Yarmouth, is, by by-law, to grant to Union Gas Limited rights to extend or add to the works for the distribution of gas and to supply gas to inhabitants to an area west of Catfish Creek, including the hamlet of Sparta;

AND IN THE MATTER OF an Application by Union Gas Limited for an order dispensing with the assent of the municipal electors of the Corporation of the Township of Yarmouth regarding the said by-law.

BEFORE: P.W. Hardie
Presiding Member

C. Elwell
Member

ORDER

Union Gas Limited ("Union") filed an Application dated June 7, 1996 with the Ontario Energy Board ("the Board") under section 9 of the Municipal Franchises Act ("the Act") for approval of the terms and conditions upon which, and the period for which, the right to construct and operate works for the distribution of gas in the Township of Yarmouth, and the right to supply gas to the inhabitants to an area west of Catfish Creek, including the hamlet of Sparta, in the Township of Yarmouth (the "Franchise Agreement") is to be granted to Union. Union also requested that the Board declare and direct, pursuant to section 9(4) of the Act, that the assent of the municipal electors to draft by-law approving the Franchise Agreement is not necessary.

The Franchise Agreement is attached as Appendix "A".

The Board's Notice of Application dated July 9, 1996 was served upon the Clerk of the Corporation of the Township of Yarmouth. The Board issued a Procedural Order and Notice of Hearing dated September 10, 1996.

The Application was heard in Toronto on September 27, 1996, in the presence of Counsel for Union, Counsel for Natural Resource Gas Limited and Counsel for Board Staff. The Board issued an oral Decision on September 27, 1996, in which it approved the Application subject to three conditions:

- 1) that the Corporation of the Township of Yarmouth pass a by-law approving a franchise agreement with respect to the area that was the subject of Union's Application, based on the model Franchise Agreement;
- 2) that Union satisfy the conditions that it agreed to during the hearing; and
- 3) that Union report the first three years of the project's actual customer attachments compared to the forecast attachments in its rates case.

A resolution was passed by the Council of the Corporation of the Town of Yarmouth, dated October 7, 1996 approving a by-law authorizing a franchise agreement ("the Franchise Agreement") between Union Gas Limited and the Corporation of the Township of Yarmouth.

On November 7, 1996 the Board received a copy of by-law No. 3474 authorizing a Franchise Agreement between the Township and Union based on the model Franchise Agreement.

THE BOARD THEREFORE ORDERS THAT:

1. The terms and conditions upon which, and the period for which, the right to construct and operate works for the distribution of gas in the Township of Yarmouth and its inhabitants is to be granted, as stated in the proposed Franchise Agreement attached as Appendix "A", are approved.
2. The assent of the municipal electors of the Township of Yarmouth to the Draft By-law is not necessary.
3. Union submit a report to the Board consisting of the actual customer attachments for the first three years of the project compared to the forecast attachments in its rates case.
4. Union satisfy the conditions it agreed to during the hearing.
5. The Board's costs shall be paid by Union forthwith upon the issuance of the Board's invoice.

ISSUED at Toronto, May 7, 1997

ONTARIO ENERGY BOARD



Peter H. O'Dell
Assistant Board Secretary

APPENDIX "A" TO
BOARD FILE NO. E.B.A. 753

DATED May 7, 1997

A handwritten signature in black ink, appearing to read "P. O'Dell", written over a horizontal line.

Peter H. O'Dell
Assistant Board Secretary

FRANCHISE AGREEMENT

THIS AGREEMENT made this 7th day of October, 1996,
BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF YARMOUTH

hereinafter called the "Corporation"

- and -

Union Gas
LIMITED

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute and sell gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the Reeve and the Clerk have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

I. DEFINITIONS

1. In this Agreement:

- (a) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;
- (b) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the supply, transmission and distribution of gas in or through the Municipality;
- (c) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;

- (d) "Municipality" means the territorial limits of the Corporation ~~on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;~~ as specified on Schedule "A" attached hereto.
- (e) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation.

II. RIGHTS GRANTED

1. To provide gas service.

The consent of the Corporation is hereby given and granted to the Gas Company to supply gas in the Municipality to the Corporation and to the inhabitants of the Municipality.

2. To use road allowances.

The consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the supply, distribution and transmission of gas in and through the Municipality.

3. Duration of Agreement and Renewal Procedures.

The rights hereby given and granted shall be for a term of fifteen (15) * years from the date of final passing of the By-law.

- * Footnote: The rights given and granted for a first agreement shall be for a term of 20 years. The rights given and granted for any subsequent agreement shall be for a term of not more than 15 years, unless both parties agree to extend the term to a term of 20 years maximum.

At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. Nothing herein stated shall preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to Section 10 of the Municipal Franchises Act.

III. CONDITIONS

1. Approval of Construction

Before beginning construction of or any extension or change to the gas system (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific location, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy. Geodetic information will not be required except in complex urban intersections in order to facilitate known projects, being projects which are reasonably anticipated by the Engineer/Road Superintendent. The Engineer/Road Superintendent may require sections of the gas system to be laid at a greater depth than required by CAN/CSA Z184-M92 to facilitate known projects. The location of the work as shown on the said plan must be approved by the Engineer/Road Superintendent before the commencement of the work and the timing, terms and conditions relating to the installation of such works shall be to his satisfaction.

Notwithstanding the provisions of the above noted paragraph, in the event it is proposed to affix a part of the gas system to a bridge, viaduct or structure, the Engineer/Road Superintendent may, if the Engineer/Road Superintendent approves of such location, require special conditions or a separate agreement.

No excavation, opening or work which shall disturb or interfere with the surface of the travelled portion of any highway shall be made or done unless a permit therefor has first been obtained from the Engineer/Road Superintendent and all works shall be done to his satisfaction.

The Engineer/Road Superintendent's approval, where required throughout this section, shall not be withheld unreasonably.

2. As Built Drawings

The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received. After completion of the construction, where plans were initially filed, an "as built" plan of equal quality to the pre-construction plan or certification that the pre-construction plan is "as built" will be filed with the Engineer/Road Superintendent.

3. Emergencies

In the event of an emergency involving the gas system, the Gas Company will proceed with the work and in any instance where prior approval of the Engineer/Road Superintendent is normally required, shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force having jurisdiction.

4. Restoration

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay any reasonable account therefor as certified by the Engineer/Road Superintendent.

5. Indemnification

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which the Corporation may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

6. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and to provide, if it is feasible, the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation will share, as provided in Paragraph III-7 of this Agreement, in the cost of relocating or altering the gas system to facilitate continuity of gas service.

7. Pipeline Relocation

If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

Where any part of the gas system relocated in accordance with this section is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system.

Where any part of the gas system relocated in accordance with this section is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:

- (a) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
- (b) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
- (c) the amount paid by the Gas Company to contractors for work related to the project,
- (d) the cost to the Gas Company for materials used in connection with the project, and
- (e) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (a), (b), (c) and (d) above.

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company.

8. Notice to Drainage Superintendent

In a case where the gas system may affect a municipal drain, the Gas Company shall file with the Drainage Superintendent, for purposes of the Drainage Act, or other person responsible for the drain, a copy of the plan required to be filed with the Engineer/Road Superintendent.

9. Other Conditions

Notwithstanding the cost sharing arrangements described in Paragraph III-7, if any part of the gas system altered or relocated in accordance with Paragraph III-7 was constructed or installed prior to January 1st, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

IV. PROCEDURAL AND OTHER MATTERS

1. Municipal By-laws of General Application

This Agreement and the respective rights and obligations hereunto of the parties hereto are hereby declared to be subject to the provisions of all regulating statutes and all municipal by-laws of general application and to all orders and regulations made thereunder from time to time remaining in effect save and except by-laws which impose permit fees and by-laws which have the effect of amending this Agreement.

2. Giving Notice

Notices may be given by delivery or by mail, and if mailed, by prepaid registered post, to the Gas Company at its head office or to the Clerk of the Corporation at its municipal offices, as the case may be.

3. Disposition of Gas System

During the term of this Agreement, if the Gas Company abandons a part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove that part of its gas system affixed to the bridge, viaduct or structure.

If at any time the Gas Company abandons any other part of its gas system, it shall deactivate that part of its gas system in the Municipality. Thereafter, the Gas Company shall have the right, but nothing herein contained shall require it, to remove its gas system. If the Gas Company fails to remove its gas system and the Corporation requires the removal of all or any of the gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the deactivated gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby.

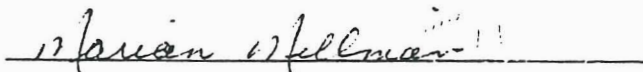
4. Agreement Binding Parties

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

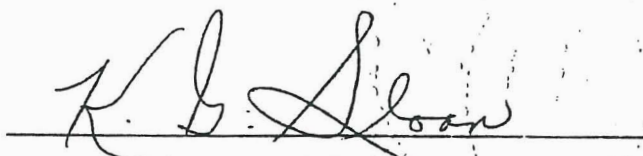
IN WITNESS WHEREOF the parties hereto have duly executed these presents with effect from the date first above written.

THE CORPORATION OF THE

TOWNSHIP OF YARMOUTH

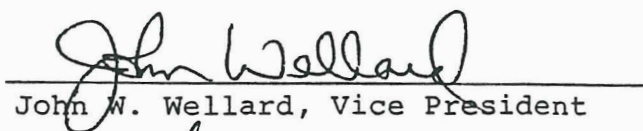


Marian Millman, Reeve

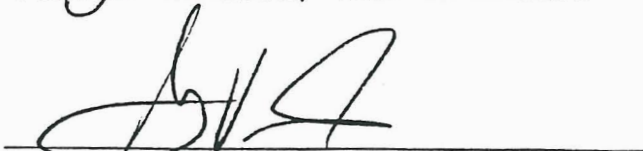


Ken G. Sloan, Administrator and Clerk

Union Gas
LIMITED



John W. Wellard, Vice President



Ross S. Valdis, Assistant Secretary

SCHEDULE "A"

1. Concession I Lots 1 through 22.
2. Concession II Lots 1 through 22 and the north half of Lots 23, 24, and 25.
3. Concession III Lots 1 through 25.
4. Concession IV Lots 1 through 24 and part of Lot 25 which is west of Catfish Creek.
5. Concession V Lots 1 through 23 and part of Lots 24 and 25 which are west of Catfish Creek.
6. Concession VI Lots 1 through 24 and part of Lots 25 and 26 which are west of Catfish Creek.
7. Concession VII Lots 1 through 23 and part of Lots 24 and 25 which are west of Catfish Creek.
8. Concession VIII Lots 1 through 23 and part of Lots 24, 25, 26, 27 west of Catfish Creek.
9. Concession IX Lots 1 through 22 and the south half of Lots 23, 24, 25 and 26.
10. Range I, south of Edgeware Road
 Lots 1 through 19.
11. Range I, north of Edgeware Road
 Lots 1 through 19.
12. Range II, north of Edgeware Road
 Lots 1 through 19.
13. Concession X Lots 1 through 19.
14. Concession XI Lots 1 through 19.
15. Concession XII Lots 1 through 18.
16. Concession XIII Lots 2 through 18.
17. Concession XIV Lots 8 through 12.



IN THE MATTER OF the Municipal Franchises Act,
R.S.O. 1990, c. M.55;

AND IN THE MATTER OF an Application by Union Gas Limited for an order approving the terms and conditions upon which and the period for which the Corporation of the Township of Yarmouth is, by by-law, to grant to Union Gas Limited rights to extend or add to the works for the distribution of gas already constructed and operated within the Township boundary so as to supply gas to inhabitants of the Hamlet of New Sarum;

AND IN THE MATTER OF an Application by Union Gas Limited for an order dispensing with the assent of the municipal electors of the Corporation of the Township of Yarmouth to the said by-law.

BEFORE: P.W. Hardie
Presiding Member

P. Vlahos
Member

C. Elwell
Member

O R D E R

Union Gas Limited ("Union") filed an Application dated November 1, 1994 with the Ontario Energy Board (the "Board") under s. 9 of the Municipal Franchises Act (the "Act") for approval of the terms and conditions upon which and the period for which the right to extend or add to works for the distribution of gas to the Hamlet of New Sarum (Concession 9, Lots 20 and 21) in the Township of Yarmouth (the "Township") is to be granted to Union.

An Amended Application (the "Amendment"), dated September 27, 1995 was filed with the Board requesting that the original Application be amended to include the extension of natural gas service to Lots 65 and 66 of Concession 8 in the Township of Yarmouth. This Amendment was made to allow gas service to be extended to all of the

residents of the Hamlet of New Sarum.

A resolution was passed by the Council of the Corporation of the Township of Yarmouth, dated September 27, 1995 approving the form of a by-law ("the By-law") authorizing the supply of natural gas to Concession 9, Lots 20, 21 and Concession 8, Lots 65, 66, and requesting that the Board dispense with the assent of the municipal electors to the By-law.

Union also requested the Board to declare and direct, pursuant to s. 9(4) of the Act, that the assent of the municipal electors to the By-law is not necessary.

The Notices of Application and Hearing were served on all parties as directed by the Board.

The Application was heard in Toronto on September 27 and 28, 1995 in the presence of counsel for Union, counsel for Natural Resource Gas Limited, counsel for the Corporation of the Township of Yarmouth and counsel for Board Staff. The Board issued an oral decision on September 28, 1995, approving the Amended Application.

THE BOARD THEREFORE ORDERS THAT:

1. The terms and conditions upon which and the period for which the right to construct natural gas pipelines, and the right to supply gas to the Hamlet of New Sarum and its inhabitants, as indicated in the By-law of the Corporation of the Township of Yarmouth attached at Appendix "A", are approved;
2. The assent of the municipal electors of the Corporation of the Township of Yarmouth to the By-law is not necessary;

3. The reasonably incurred costs of the Corporation of the Township of Yarmouth and its witness shall be paid by Union following a review by the Board's cost assessment officer; and
4. The Board's costs of and incidental to these proceedings shall be paid by Union forthwith upon the receipt of the Board's invoice.

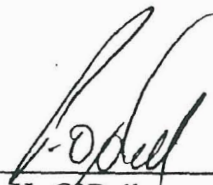
ISSUED at Toronto, October 2, 1995.

ONTARIO ENERGY BOARD



Peter H. O'Dell
Assistant Board Secretary

Appendix "A" to Board
Order E.B.A 691 dated
October 2, 1995.



Peter H. O'Dell
Assistant Board Secretary

THE CORPORATION OF THE TOWNSHIP OF YARMOUTH

BY-LAW NO. 3407

Being a By-law to authorize Union Gas Limited (formerly Union Gas Company of Canada, Limited) to construct works and supply gas in certain areas of the Township of Yarmouth.

WHEREAS Union Gas Limited has requested permission to construct and maintain natural gas lines within the Township of Yarmouth;

AND WHEREAS the Council of the Corporation of the Township of Yarmouth has determined that natural gas should be supplied to persons whose lands are located within the Township of Yarmouth;

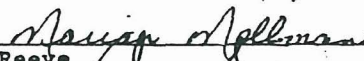
THEREFORE be it enacted by the Council of the Corporation of the Township of Yarmouth as follows:


1. THAT Union Gas Limited is hereby authorized to construct and maintain natural gas transmission lines, and to supply natural gas to all properties in the Township of Yarmouth as described in Schedule 'A' attached hereunto.
2. THAT this by-law shall come into force on the day of its passing.

Read a first time this 27 day of September, 1995.

Read a second time this 27 day of September, 1995.

Provisionally adopted this 27 day of September, 1995.



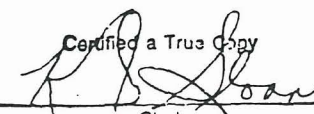
Reeve


Clerk

Read a third time and finally passed this _____ day of _____, 1995.

Reeve

Clerk

Certified a True Copy


Clerk
TOWNSHIP OF YARMOUTH

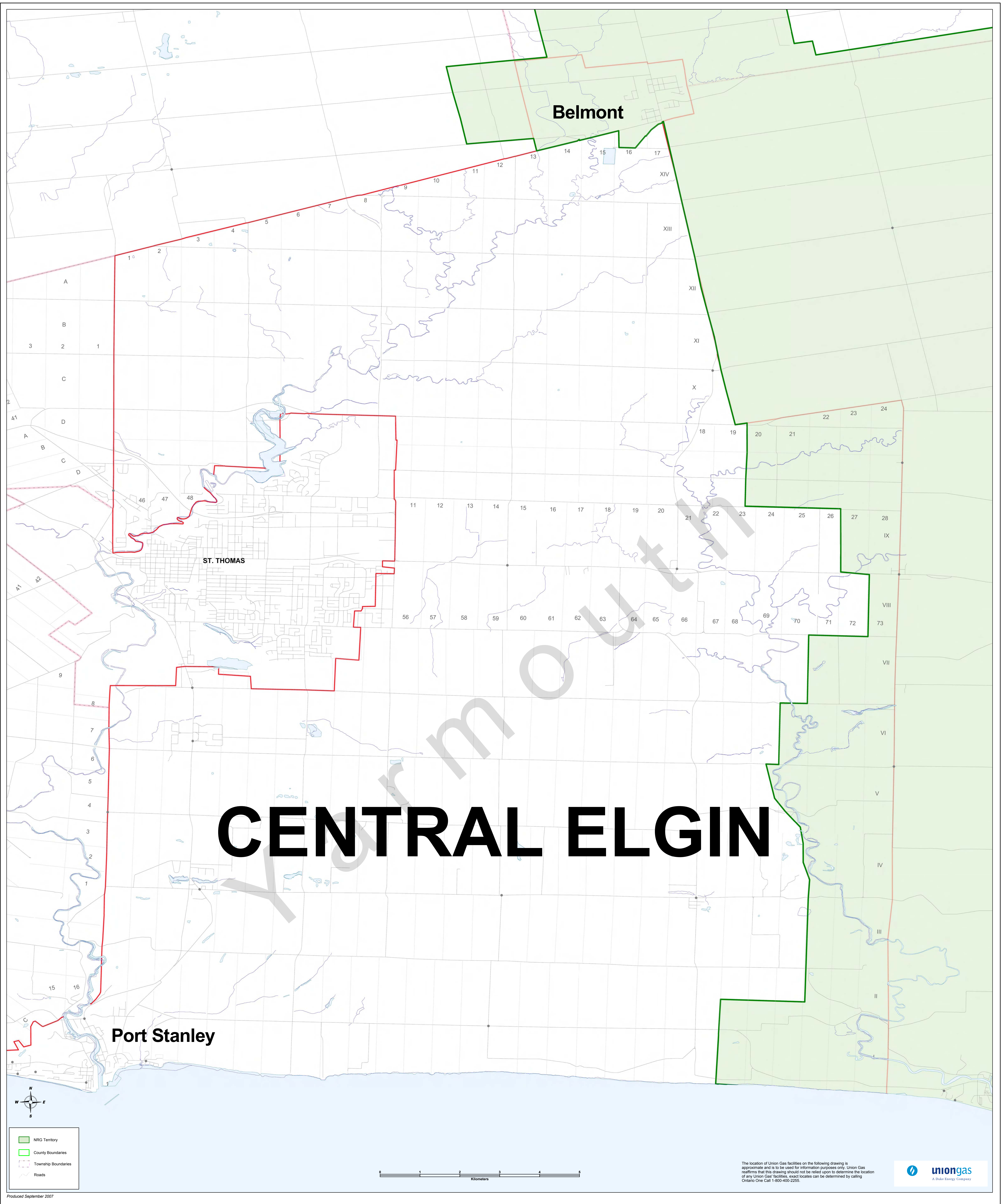
THE CORPORATION OF THE TOWNSHIP OF YARMOUTH

BY-LAW NO. 3407

Schedule "A"

TOWNSHIP OF YARMOUTH

1. Concession 9, Lots 20, 21
2. Concession 8, Lots 65, 66



CENTRAL ELGIN

- NRG Territory
- County Boundaries
- Township Boundaries
- Roads

0 1 2 3 4 5
Kilometers

The location of Union Gas facilities on the following drawing is approximate and is to be used for information purposes only. Union Gas reaffirms that this drawing should not be relied upon to determine the location of any Union Gas facilities, exact locations can be determined by calling Ontario One Call 1-800-400-2255.

